



Journal of the Senate

State of Indiana

114th General Assembly

First Regular Session

Fifty-third Meeting Day

Tuesday Afternoon

April 26, 2005

The Senate convened at 1:35 p.m., with the President of the Senate, Rebecca S. Skillman, in the Chair.

Prayer was offered by Pastor Steve Viars, Faith Baptist Church, Lafayette, the guest of Senator Brandt E. Hershman.

The Pledge of Allegiance to the Flag was led by Senator Hershman.

The Chair ordered the roll of the Senate to be called. Those present were:

Alting	Long
Antich-Carr	Lubbers
Bowser	Lutz
Bray	Meeks
Breaux	Merritt
Broden	Miller
Clark	Mishler
Craycraft	Mrvan
Dillon	Nugent
Drozda	Paul
Ford	Riegsecker
Gard	Rogers
Garton	Server
Harrison	Simpson
Heinold	Sipes
Hershman	Skinner
Howard	Smith
Hume	Steele
Jackman	Waltz
Kenley	Waterman
Kruse	Weatherwax
Lanane	Wyss
Landske	Young, M.
Lawson	Young, R.
Lewis	Zakas

Roll Call 467: present 50. The Chair announced a quorum present. Pursuant to Senate Rule 5(d), no motion having been heard, the Journal of the previous day was considered read.

RESOLUTIONS ON FIRST READING

Senate Resolution 38

Senate Resolution 38, introduced by Senators Wyss, Merritt, and Paul:

A SENATE RESOLUTION to support the Indiana National Guard Hoosier Patriot Memorial.

Whereas, The Indiana National Guard traces its unbroken history and lineage back to 1801 and is older than the State of Indiana;

Whereas, Forefathers of today's Indiana National Guard were organized initially as protection against marauding Indians and fought with General William Henry Harrison at the Battle of Tippecanoe in 1811 when the great Shawnee chief, the Prophet, was defeated;

Whereas, Indiana National Guard units have been called to federal service in every war and armed conflict which has faced our nation over the past 200 years, including the Mexican War in 1840, the Civil War in 1861, the Spanish-American War in 1899, the Mexican Border Conflict of 1916, World War I in 1917, World War II in 1941, the Korean War in 1949, the Vietnam War in 1966, and Desert Storm in 1990;

Whereas, There are countless other instances over the past 200 years in which the Governor has called the Indiana National Guard into state service for assistance in disaster relief or to help maintain law and order. During the worst of tornadoes, flooding, blizzard conditions, failure of city and town utilities, aircraft crashes, domestic violence, and a host of other emergencies, the Indiana National Guard that has, and will continue to have, dedicated Hoosier men and women trained to respond immediately and professionally;

Whereas, Today America is once more engaged in a war to combat world wide terrorism and has called upon the Indiana National Guard to send its brave members into harm's way to combat and revenge the terrorist events following 9-11;

Whereas, Today the Indiana National Guard has mobilized over 7,000 soldiers and 2,300 airmen who have served in Iraq, Qatar, Afghanistan, Bosnia, Kosovo, Slovakia, Germany, and in combat zones world wide, as well as at military installations throughout the United States in support of Operation Noble Eagle and the War on Terrorism;

Whereas, To date, twenty-seven Hoosier men and women have sacrificed their lives for their state and country in the war effort; and

Whereas, It has been made known to the Indiana Senate that citizens of our state have indicated a desire and intent to dedicate and build an Indiana National Guard Hoosier Patriot Memorial to honor all members past, present, and future of the Indiana National Guard to be located at Washington Park Cemetery in Indianapolis, Indiana: Therefore:

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the members of the Indiana Senate support the design, implementation, and construction of the Indiana National Guard Hoosier Patriot Memorial in honor of all members of the Indiana National Guard past, present, and future.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to Major General George Buskirk and Major General R. Martin Umbarger, Adjutant General of Indiana.

The resolution was read in full and referred to the Committee on Homeland Security, Utilities, and Public Policy.

Senate Resolution 39

Senate Resolution 39, introduced by Senator Bray:

A SENATE RESOLUTION urging the Legislative Council to assign to the Sentencing Policy Study Committee the issue of pretrial diversion programs.

Whereas, The determination of whom to prosecute is within the sole discretion of prosecuting attorneys;

Whereas, Indiana law grants prosecuting attorneys authority to withhold formal prosecution in certain cases to allow defendants an opportunity to successfully complete an alternative course of action;

Whereas, These pretrial diversion and deferred prosecution programs are used frequently by prosecuting attorneys throughout the state;

Whereas, While pretrial diversion agreements are required to be filed with the court, persons participating in such programs are not under direct court supervision;

Whereas, A comprehensive study of the use of pretrial diversion and deferred prosecution programs has never been conducted;

Whereas, Such a study would prove very valuable in determining the full extent of the use of these programs, the revenue generated from fees associated with the programs, and whether there is a need for more specific guidelines for the utilization of the programs and the fees associated with the programs; and

Whereas, The Sentencing Policy Study Committee is charged with evaluating Indiana's sentencing laws and policies and is therefore the appropriate body to undertake such a study: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the Legislative Council is urged to assign to the Sentencing Policy Study Committee the topic of the use of

pretrial diversion and deferred prosecution programs by Indiana prosecuting attorneys.

SECTION 2. That the Secretary of the Senate is hereby directed to transmit a copy of this Resolution to the Chair and Vice-Chair of the Legislative Council.

The resolution was read in full and referred to the Committee on Rules and Legislative Procedure.

Senate Resolution 40

Senate Resolution 40, introduced by Senator Riegsecker:

A SENATE RESOLUTION to urge the assignment of the Indiana Toll Road as a topic for study by an interim study committee.

Whereas, In 2006, the Indiana Toll Road will celebrate its 50th anniversary as Indiana's first interstate and transportation corridor;

Whereas, The Indiana Toll Road is the gateway to Northern Indiana from neighboring states, carrying 54 million vehicles and 130 million travelers annually;

Whereas, The Indiana Toll Road is a primary economic development tool for Northern Indiana, moving commerce, workers, residents and visitors through the region;

Whereas, The Indiana Toll Road generates a total of \$7,247,575 from Indiana motor fuel sales tax and \$1,667,622 from Indiana sales tax on food and merchandise;

Whereas, More than 25 million travelers stop at one of the ten travel plazas along the Indiana Toll Road; and

Whereas, Revenue from the Indiana Toll Road is an important resource for local and state government: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the legislative council is urged to assign the Indiana Toll Road as a topic for study by an interim study committee.

SECTION 2. That the committee should study marketing and image building opportunities for state, regional and local economic development and tourism organizations; the economic impact of the Indiana Toll Road on Northern Indiana; the travelers opinions of the services, appearance, cleanliness and functionality of the ten travel plazas; the master landscaping plan using interchanges as gateways to communities; the vendor agreements - relating to overall consistent standards for maintenance and merchandising, and enforcement procedures; the new partnership opportunities for funding of economic and tourism development activities; and the development of communication, marketing, promotion and economic development initiatives.

SECTION 3. That the committee's deliberations shall operate under the direction of the legislative council, and that the committee shall issue a final report when directed to do so by the council.

The resolution was read in full and referred to the Committee on Rules and Legislative Procedure.

Senate Resolution 41

Senate Resolution 41, introduced by Senators Riegsecker, Craycraft, and Drozda:

A SENATE RESOLUTION to urge the Indiana State Department of Health (ISDH), the Indiana Occupational Safety and Health Administration Division of the Indiana Department of Labor (IOSHA), the Indiana Department of Environmental Management (IDEM), and the Federal Railroad Administration (FRA) to review the health and safety standards at railroad mobile camps.

Whereas, Mobile camps are temporary facilities set up to house maintenance of way employees who travel throughout the country to perform maintenance and repair work on railroad tracks; and

Whereas, The Federal Railroad Administration has established guidelines for clean, safe, and sanitary railroad mobile camps in the Code of Federal Regulations at 49 CFR 228, Appendix C; and

Whereas, Due to the temporary nature of the mobile railroad camps, oversight and inspection by federal resources is limited; and

Whereas, Involvement of appropriate state and local agencies would help to address, in a more timely manner, health and safety issues for both the railroad maintenance of way employees and the residents of the communities in the area surrounding the mobile camps: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the Indiana General Assembly encourages the railroad companies, railroad employees and unions to work together to improve the health and safety of the mobile camps housing maintenance of way employees.

SECTION 2. That the Indiana General Assembly urges ISDH, the IOSHA Division of the Indiana Department of Labor, and IDEM, to the extent allowed by current law, to inspect the mobile camps housing maintenance of way employees in Indiana for compliance with the health and safety guidelines.

SECTION 3. That the Indiana General Assembly urges these agencies, in conjunction with the FRA, to make recommendations regarding legislative action needed to help promote more timely and effective enforcement of the health and safety guidelines for the mobile camps and to submit a report to the Legislative Council on or before November 1, 2005.

SECTION 4. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to Dr. Judy Monroe, Commissioner of the Indiana State Department of Health; Miguel

Rivera, Sr., Commissioner of the Indiana Department of Labor; Thomas Easterly, Commissioner of the Indiana Department of Environmental Management; Jeffrey Bainter, Indiana Legislative Director of the Brotherhood of Maintenance of Way Employees; and Robert Jamison, Administrator for the Federal Railroad Administration.

The resolution was read in full and referred to the Committee on Homeland Security, Utilities, and Public Policy.

House Concurrent Resolution 35

House Concurrent Resolution 35, sponsored by Senator Miller:

A CONCURRENT RESOLUTION urging the department of transportation to rename the section of Interstate Highway 65 running through Johnson County the Pearl Harbor Memorial Highway.

Whereas, It is important and fitting for our society to recognize and honor the contributions of those citizens who have served this nation in times of war;

Whereas, The December 7, 1941, attack on Pearl Harbor was a devastating attack on our nation's homeland that cost the lives of more than two thousand American civilians, soldiers, sailors, and marines;

Whereas, As the Pearl Harbor Memorial Highway, Interstate 65 throughout Johnson County could stand as the legacy of those heroic men and women who gave their lives in defense of the United States of America and the freedom of its citizens; and

Whereas, In these times of danger throughout America, it is vital to remember the bravery of those citizens who made the ultimate sacrifice for their country and ensure that all Americans will be ever vigilant so that tragedies like that do not happen again: Therefore,

*Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana,
the Senate concurring:*

SECTION 1. That the Indiana General Assembly urges the Indiana Department of Transportation to rename the part of Interstate that runs through Johnson County the Pearl Harbor Memorial Highway.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to the commissioner of the Indiana Department of Transportation.

The resolution was read in full and referred to the Committee on Commerce and Transportation.

House Concurrent Resolution 66

House Concurrent Resolution 66, sponsored by Senators Rogers, Howard, Smith, Breaux, and Dillon:

A CONCURRENT RESOLUTION condemning the genocide in Darfur, Sudan, and calling for action.

Whereas, Since February 2003, government-backed militias, known as the Janjaweed, have been engaging in a systematic program of expulsion, starvation, rape, and murderous violence to wipe out entire communities of African tribal farmers, resulting in the death of over 335,000 innocent civilians and the internal displacement of over two million people, only half of whom are receiving aid, and 213,000 of whom are refugees having fled to neighboring Chad;

Whereas, Nearly 1.5 million people are currently receiving food assistance, 22% of whom are under the age of five, and roughly 10,000 people per month are dying from disease or malnutrition;

Whereas, In recent months, the situation has deteriorated significantly, the fighting has escalated, and several relief organizations, unable to protect their workers, have pulled out of the region, further limiting access to protection and aid for refugees;

Whereas, The United States Administration and Congress have termed the crisis in Sudan "genocide";

Whereas, President Bush has demanded that the Sudanese government stop the genocide in the Darfur region, the United States House and Senate have voted unanimously to condemn the genocide in Darfur, and, for the first time in its history, the Committee on Conscience of the United States Holocaust Memorial Museum has declared a "genocide emergency" in Sudan; and

Whereas, The Indiana General Assembly looks in horror upon the persecution of any group based on race, religion, ethnicity, or other distinctions used to degrade the value of any human life and, that as people of conscience, we have a responsibility to speak out in the face of genocide: Therefore,

*Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana,
the Senate concurring:*

SECTION 1. That the Indiana General Assembly commends the Bush Administration and Congress, as well as the United States Holocaust Memorial Museum, for their leadership in declaring the Sudanese crisis "genocide" and for seeking a peaceful resolution to the conflict in Darfur and addressing the humanitarian crisis.

SECTION 2. That the Indiana General Assembly expresses its serious concern over the growing insecurity and violence in Darfur, the region's dire humanitarian situation, continued violations of human rights, and repeated breaches of the cease fire.

SECTION 3. That the Indiana General Assembly expresses its outrage at the inaction of the international community and calls on Congress and President Bush to provide the necessary leadership for an international effort to stop the genocide in Darfur, encourage humanitarian assistance to all those in need, and make the protection of the civilian population the highest priority.

SECTION 4. That the Indiana General Assembly encourages statewide activism and increased awareness through education of the situation in the Sudan.

SECTION 5. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to the President of the United States and the members of the Indiana congressional delegation.

The resolution was read in full and referred to the Committee on Homeland Security, Utilities, and Public Policy.

House Concurrent Resolution 74

House Concurrent Resolution 74, sponsored by Senator Hershman:

A CONCURRENT RESOLUTION urging the establishment of an interim study committee on identity theft.

Whereas, Identity theft occurs when someone uses such personal information as an individual's name, Social Security number, or credit card number without that individual's permission to commit crimes; and

Whereas, Identity theft is a serious crime that can result in the victim losing job opportunities; being refused loans for education, housing, or cars; and being arrested for crimes the victim did not commit: Therefore,

*Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana,
the Senate concurring:*

SECTION 1. That the legislative council is urged to establish a committee to study identity theft.

SECTION 2. That the committee, if established, shall operate under the direction of the legislative council and shall issue a final report when directed to do so by the council.

The resolution was read in full and referred to the Committee on Rules and Legislative Procedure.

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1776.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolutions 79 and 80 and the same are herewith transmitted for further action.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the

Senate that the House has passed Senate Concurrent Resolutions 11, 12, 13, 29, and 56 and the same are herewith returned to the Senate.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed Senate Concurrent Resolutions 15 and 62 and the same are herewith returned to the Senate.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1403.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has concurred with the Senate amendments to Engrossed House Bill 1776.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed Senate Bills 217-1, 224-1, 295-1, 304-1, 329-1, and 363-1 .

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolutions 35 and 74 and the same are herewith transmitted for further action.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolutions 77 and 78 and the same are herewith transmitted for further action.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the Speaker of the House has appointed the following Representatives to a conference committee to confer with a like

committee of the Senate on Engrossed Senate Bill 432:

Conferees:
Becker and Pelath
Advisor:
Frizzell

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the Speaker of the House has appointed the following Representatives to a conference committee to confer with a like committee of the Senate on Engrossed Senate Bill 498:

Conferees:
Hinkle and Van Haaften
Advisors:
Woodruff, Becker, and Avery

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the Speaker of the House has appointed the following Representatives to a conference committee to confer with a like committee of the Senate on Engrossed Senate Bill 460:

Conferees:
Ayres and Oxley
Advisors:
Buell and Welch

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has concurred on Engrossed House Bill 1004.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed Senate Bills 18-1, 67-1, 89-1, 378-1, and 433-1.

M. CAROLINE SPOTTS
Principal Clerk of the House

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Pursuant to Senate Rule 83(i), your Committee on Rules and Legislative Procedure to which was referred Conference Committee Reports filed on Engrossed Senate Bills 67, 89, 196, 201, 224, 233, 295, 378, 379, 433, 481, 509, and 564 has had the same under consideration and begs leave to report back to the Senate with the

recommendation that said Conference Committee Reports are eligible for consideration.

GARTON, Chair

Report adopted.

RESOLUTIONS ON FIRST READING

Senate Concurrent Resolution 71

Senate Concurrent Resolution 71, introduced by Senators Zakas, Broden, Drozda, and Bowser:

A CONCURRENT RESOLUTION congratulating the University of Notre Dame fencing team for winning the NCAA Fencing Championships.

Whereas, With a 44-10 record that lifted their team past Ohio State, Notre Dame delivered the program's seventh national title;

Whereas, Notre Dame qualified only 11 of the maximum 12 total entrants (five men, six women) in the four-day event, but the Irish met the challenge, becoming the first fencing program ever to win the NCAA title without the full allotment of fencers;

Whereas, Notre Dame's six entrants in the women's portion of the NCAA Combined Fencing Championships lived up to their top-ranked billing;

Whereas, While Notre Dame's sabre dominance was clear for all to see, it was the effort of the epeeists that ultimately helped to capture the championship; and

Whereas, Ohio State held a 24-point lead over Notre Dame after the men's bouts had concluded, but the Irish women put on an impressive display winning several bouts in the closing rounds: Therefore,

Be it resolved by the Senate of the General Assembly of the State of Indiana, the House of Representatives concurring:

SECTION 1. That the University of Notre Dame Fencing Team be congratulated for their dramatic victory in the NCAA Combined Fencing Championships.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to Athletic Director Kevin White, Head Coach Janusz Bednarski, and Assistant Coach Zoltan Dudas.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution. House sponsors: Representatives Bauer and Walorski.

RESOLUTIONS ON SECOND READING

Senate Resolution 26

Senator Waterman called up Senate Resolution 26 for second reading. The resolution was read a second time by title and adopted by voice vote.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 78

House Concurrent Resolution 78, sponsored by Senator Drozda:

A CONCURRENT RESOLUTION honoring the Tri-Central High School Girls Basketball Team Class 1A 2003-2004 State Champions.

Whereas, The Lady Trojans enjoyed a 46-36 victory over Washington Catholic to win the Class 1A Girls State Basketball Championship;

Whereas, Three Trojans scored in double figures with Meranda Burnett leading the way with 15 points and seven assists, Kristen Miller added 12 points and pulled down 7 board and Janel Cox scored 10 points;

Whereas, Meranda Burnett and Kristen Miller were the only returning starters from last year's title squad;

Whereas, Kristen Miller received the Patricia L. Roy Mental Attitude Award in 2004 for Class 1A after being nominated by her coach and principal for excelling in mental attitude, scholarship, leadership and athletic ability;

Whereas, Kristen Miller was also the first eve Tri-Central athlete to be named to the Indiana All-Star Basketball Team;

Whereas, Sophomore guard Meranda Burnett was named the most valuable player of the Class 1A state tournament;

Whereas, Sophomore guard Janel Cox was named to the All-Tournament Team;

Whereas, Coach Kathie Layden was selected to lead the Indiana Girls in the North versus South All-Star game;

Whereas, In the All-Star game, Coach Layden's team won by 10 points after leading by as many as 20 points;

Whereas, The Lady Trojans successfully defended their Hoosier Heartland Conference Title for the second year in a row;

Whereas, Tri-Central finished their season with a 21-6 record; and

Whereas, The team consisted of Kaci Allen, Andrea Bowne, Meranda Burnett, Anne Cage, Ashely Clark, Kelly Colbert, Janel Cox, River Dalton, Andrea DeWitt, Kristen Miller, Allison Mitchell, Allison Thompson, Student Managers Kenny Dearth, Betsie Miller and Kyle Ungar, Trainer Carrie Preston, Student Trainers Kacy Greene and Kayla Burke and Assistant Coaches Dave Wise, Andy Burnett and Mike Wise and Coach Kathie Layden: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. The Indiana House of Representatives, the Senate concurring, congratulates the Tri-Central High School Girls Basketball Team Class 1A 2003-2004 State Champions.

SECTION 2. That the Principal Clerk of the Indiana House of Representatives shall transmit a copy of this resolution to the players, student managers, trainers and coaches of Tri-Central High School Girls Basketball Team.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

House Concurrent Resolution 77

House Concurrent Resolution 77, sponsored by Senator Drozda:

A CONCURRENT RESOLUTION honoring the Tri-Central High School Girls Basketball Team Class 1A 2004-2005 State Champions.

Whereas, The Lady Trojans have won the Girls Class 1A State Basketball Title for three consecutive years;

Whereas, Tri-Central Girls Basketball became the first team ever to win three consecutive state championships in Class 1A;

Whereas, The Lady Trojans became the first ever public school to win three consecutive Girls Basketball State titles;

Whereas, Tri-Central beat North Vermillion in 2003 to win their first ever state championship in Girls Basketball;

Whereas, Tri-Central beat Washington Catholic in 2004 to win their second consecutive State Championship for Class 1;

Whereas, Tri-Central beat Northeast Dubois by a score of 47-46 with 2.4 seconds left to win their third consecutive 2005 State Girls Basketball Championship;

Whereas, Kaci Allen led the Trojans with a game high 20 points and Meranda Burnett added 12 points;

Whereas, The Lady Trojans finished the 2004-2005 season with a record of 18-7;

Whereas, The Lady Trojans have won two unblemished Hoosier Heartland Conference titles with a three season, 14-1 conference record;

Whereas, Over three seasons, the Lady Trojans have played a fourth season since their tournament games equal another entire regular season with a slate of 20 games in which they were undefeated;

Whereas, The Lady Trojans have made the tiny community of Sharpsville a bold metropolis on the IHSAA map;

Whereas, Coach Kathie Layden has led the Girls Varsity Basketball team for six years; and

Whereas, The team included Allison Mitchell, Kelly Colbert, Andrea Bowne, Meranda Burnett, Whitney Coffin, Sarah Adams, Janel Cox, Kaci Allen, Amber Suiters, Anne Cage, Sally Adams, Assistant Coaches Dave Wise and Andy Burnett, and Student Managers Amanda Calvin, Betsie Miller and Kyle Ungar: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. The Indiana House of Representatives, the Senate concurring, honors the Tri-Central High School Girls Basketball Team Class 1A 2004-2005 State Champions.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this Resolution to the coaches, players and student managers of the Tri-Central High School Girls Basketball Team.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

SENATE MOTION

Madam President: I move that Conference Committee Report #1 to Engrossed Senate Bill 268, filed April 21, 2005, be withdrawn from further consideration by the Senate.

MILLER

Motion prevailed.

RESOLUTIONS ON SECOND READING

Senate Resolution 37

Senator Miller called up Senate Resolution 37 for second reading. The resolution was read a second time by title and adopted by voice vote.

MOTIONS TO CONCUR IN HOUSE AMENDMENTS

SENATE MOTION

Madam President: I move that the Senate do concur with the House amendments to Engrossed Senate Bill 54.

RIEGSECKER

Roll Call 468: yeas 47, nays 0. Motion prevailed.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT

ESB 67-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 67 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House

amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, line 6, before "The" insert "**A CMRS provider or a PSAP may recover costs under this chapter if the costs are incurred before July 1, 2005, and invoiced to the board not later than December 31, 2005.**".

Page 4, line 41, delete "all PSAPs have been reimbursed for their costs".

Page 4, delete line 42.

Page 7, line 2, before "The" insert "(a)".

Page 7, after line 7, begin a new paragraph and insert:

"(b) **This SECTION expires January 1, 2007.**".

(Reference is to ESB 67 as printed March 23, 2005.)

Steele, Chair	Ruppel
Broden	Bischoff
Senate Conferees	House Conferees

Roll Call 469: yeas 47, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 89-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 89 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-19-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) **This section does not apply to:**

(1) **an implement of husbandry; or**

(2) **a farm tractor;**

manufactured after June 30, 2006.

~~(a)~~ (b) A farm tractor and a self-propelled farm equipment unit or an implement of husbandry not equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped with the following:

(1) At least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of the vehicle.

(2) At least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of the vehicle.

(3) Two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The lights required by this subsection must be positioned so that one (1) lamp showing to the front and one (1) lamp or reflector showing to the rear will indicate the furthest projection of the tractor, unit, or implement on the side of the road used in passing the vehicle.

~~(b)~~ (c) A combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric

lighting system must at all times required by IC 9-21-7-2 be equipped with two (2) red reflectors that meet the following requirements:

(1) Are visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(2) Are mounted in a manner so as to indicate as nearly as practicable the extreme left and right rear projections of the towed unit or implement on the highway.

~~(c)~~ (d) A farm tractor and a self-propelled unit of farm equipment or an implement of husbandry equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped with the following:

(1) Two (2) single-beam or multiple-beam head lamps meeting the requirements of section 20 or 21 of this chapter **or** IC 9-21-7-9.

(2) Two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The red lamps or reflectors must be mounted in the rear of the farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of the vehicle on the highways.

~~(d)~~ (e) A combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped as follows:

(1) The farm tractor element of each combination must be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of section 20 or 21 of this chapter or IC 9-21-7-9.

(2) The towed unit of farm equipment or implement of husbandry element of each combination must be equipped with the following:

(A) Two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or as an alternative one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear.

(B) Two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The red lamps or reflectors must be located so as to indicate as nearly as practicable the extreme left and right rear projections of the towed unit or implement on the highway.

(3) A combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system must be equipped with the following:

(A) A lamp displaying a white or an amber light, or any shade of color between white and amber visible from a distance of not less than five hundred (500) feet to the front.

(B) A lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear.

The lamps must be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of that combination on the side of the road used by other vehicles in passing that combination.

(f) A farm tractor, a self-propelled farm equipment unit, or an implement of husbandry must not display blinding field or flood lights when operated on a highway.

(g) All rear lighting requirements may be satisfied by having a vehicle with flashing lights immediately trail farm equipment in accordance with IC 9-21-7-11.

SECTION 2. IC 9-19-6-11.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11.3. (a) This section applies to the following items manufactured after June 30, 2006, when operated on a highway:**

- (1) An implement of husbandry.
- (2) A farm tractor.

(b) An implement of husbandry or a farm tractor listed in subsection (a) must be equipped with:

- (1) head lamps;
- (2) tail lamps;
- (3) work lamps;
- (4) warning lamps;
- (5) extremity lamps;
- (6) turn indicators;
- (7) rear reflectors;
- (8) front and rear conspicuity material; and
- (9) front, rear, and side retroreflective material;

that comply with the standards contained in the American Society of Agricultural Engineers (ASAE) Standard S279.11 DEC01 or any subsequent standards developed by ASAE at the time the vehicle was manufactured.

SECTION 3. IC 9-19-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12. (a) This section does not apply to:**

- (1) an implement of husbandry; or
- (2) a farm tractor;

manufactured after June 30, 2006.

(b) A vehicle, including an animal-drawn vehicle and a vehicle referred to in IC 9-19-1-1 not specifically required by this article to be equipped with lamps or other lighting devices, must at all times required by IC 9-21-7-2 be equipped with at least two (2) red reflectors visible from distances of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

SECTION 4. IC 9-21-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) The Indiana criminal justice institute may shall adopt rules under IC 4-22-2 establishing standards and specifications for the design, materials, and mounting of a standard slow moving vehicle emblem for the uniform identification of slow moving vehicles.**

(b) In adopting rules under subsection (a), the Indiana criminal justice institute shall consider the standard markings used in other states and substantially adhere to the current recommendations of the American Society of Agricultural Engineers, the American National Standards Institute, and the Society of Automotive Engineers so that the slow moving vehicle emblem may be more universally recognizable and of adequate quality.

(c) The Indiana criminal justice institute shall adopt revisions to the standards and specifications adopted as required under subsection (a) as amendments are made to the recommendations of the American Society of Agricultural Engineers, the American National Standards Institute, and the Society of Automotive Engineers regarding the slow moving vehicle emblem.

SECTION 5. [EFFECTIVE JULY 1, 2005] **(a) To implement this act, the Indiana criminal justice institute may adopt temporary rules in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules.**

(b) A temporary rule adopted under this SECTION expires on the earliest of the following:

- (1) The date rules are adopted under IC 9-21-9-5, as amended by this act.**
- (2) The date another temporary rule is adopted under this SECTION to replace an earlier rule adopted under this SECTION.**
- (3) December 31, 2006.**

(Reference is to ESB 89 as reprinted March 25, 2005.)

Jackman, Chair	Cherry
Hume	Bottomff
Senate Conferees	House Conferees

Roll Call 470: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 196-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 196 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 10-13-3-38.5, AS AMENDED BY HEA 1288-2005, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 38.5. (a) Under federal P.L. 92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:**

- (1) Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:**

(A) that has a job description that includes contact with, care of, or supervision over a person less than eighteen (18) years of age;

(B) that has a job description that includes contact with, care of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);

(C) at a state institution managed by the office of the secretary of family and social services or state department of health;

- (D) at the Indiana School for the Deaf established by IC 20-22-2-1;
- (E) at the Indiana School for the Blind established by IC 20-21-2-1;
- (F) at a juvenile detention facility;
- (G) with the gaming commission under IC 4-33-3-16;
- (H) with the department of financial institutions under IC 28-11-2-3; or
- (I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the professional standards board established under IC 20-28-2-1.

(3) Use by the state boxing commission established under IC 25-9-1-1 for licensure of a promoter (as defined in IC 25-9-1-0.7) under IC 25-9-1.

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment or license application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.

SECTION 2. IC 25-9-1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter, "matchmaker" means a person who, under contract, agreement, or other arrangement with a boxer, acts as a booker, an agent, a booking agent, or a representative to secure:**

- (1) an engagement; or**
- (2) a contract;**

for the boxer.

SECTION 3. IC 25-9-1-0.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.7. As used in this chapter, "promoter" has the meaning set forth in 15 U.S.C. 6301(9).**

SECTION 4. IC 25-9-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7. (a) Applications for licenses or permits to conduct or participate in, either directly or indirectly, a boxing or sparring match, semiprofessional elimination contest, or exhibition shall be:**

- (1) made in writing upon forms prescribed by the state boxing commission and shall be addressed to and filed with the Indiana professional licensing agency; and
- (2) verified by the applicant, if an individual, or by some officer of the club, corporation, or association in whose behalf the application is made.

(b) The application for a permit to conduct a particular boxing or sparring match, semiprofessional elimination contest, or exhibition, shall, among other things, state:

- (1) the time and exact place at which the boxing or sparring match, semiprofessional elimination contest, or exhibition is proposed to be held;
- (2) the names of the contestants who will participate and their seconds;
- (3) the seating capacity of the buildings or the hall in which such exhibition is proposed to be held;
- (4) the admission charge which is proposed to be made;
- (5) the amount of the compensation percentage of gate receipts which is proposed to be paid to each of the participants;
- (6) the name and address of the person making the application;
- (7) the names and addresses of all the officers if the person is a club, a corporation, or an association; and
- (8) the record of each contestant from a source approved by the commission.

(c) The commission shall cause to be kept by the licensing agency proper records of the names and addresses of all persons receiving permits and licenses.

SECTION 5. IC 25-9-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7.5. (a) As used in this section, "applicant" means a person applying for a promoter's license or permit.**

(b) The commission shall require an applicant to provide:

- (1) information, including fingerprints, that is needed to facilitate access to criminal history information; and**
- (2) financial information, to the extent allowed by law.**

(c) The state police department shall:

- (1) provide assistance in obtaining criminal history information of an applicant; and**
- (2) forward fingerprints submitted by an applicant to the Federal Bureau of Investigation for the release of an applicant's criminal history information for the purposes of licensure under this chapter.**

(d) The applicant shall pay any fees associated with the release of the criminal history information of the applicant.

SECTION 6. IC 25-9-1-8 IS REPEALED [EFFECTIVE JULY 1, 2005].

(Reference is to ESB 196 as printed March 25, 2005.)

Wyss, Chair	Alderman
Rogers	Crooks
Senate Conferees	House Conferees

Roll Call 471: yeas 49, nays 1. Report adopted.

CONFERENCE COMMITTEE REPORT
ESB 201-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 201 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House

amendments to the bill and that the bill be further amended as follows:

Page 3, line 5, after "being" insert ":

(1) a full-time employee of:

(A) the county; or

(B) one (1) of two (2) counties acting jointly under IC 36-1-7; or

(2)".

Page 3, line 6, block left beginning with "This".

Page 11, delete lines 8 through 42.

Page 12, delete lines 1 through 6.

(Reference is to ESB 201 as printed March 23, 2005.)

Wyss, Chair

Ruppel

Craycraft

Tincher

Senate Conferees

House Conferees

Roll Call 472: yeas 41, nays 7. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 224-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 224 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 16-18-2-150 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 150. (a) "Governing body", for purposes of IC 16-22-7, has the meaning set forth in IC 16-22-7-2.

(b) "Governing body", for purposes of IC 16-27-0.5, has the meaning set forth in IC 16-27-0.5-0.5.

~~(b)~~ (c) "Governing body", for purposes of IC 16-41-22, has the meaning set forth in IC 16-41-22-3.

SECTION 2. IC 16-27-0.5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter, "governing body" means the board of trustees, governing board, board of directors, or other body responsible for governing a home health agency or a hospice.**

SECTION 3. IC 16-27-0.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The home health care services and hospice services council is established.

(b) The council consists of sixteen (16) members as follows:

(1) One (1) licensed physician experienced in home health care.

(2) One (1) licensed physician with certification in hospice and palliative medicine.

(3) Four (4) individuals as follows:

(A) One (1) individual engaged in the administration of a nonhospital based home health agency.

(B) One (1) individual engaged in the administration of a hospital based home health agency.

(C) One (1) individual engaged in the administration of:

(i) a nonhospital based hospice; or

(ii) a hospice licensed under IC 16-25-3 that provides in-patient care.

(D) One (1) individual engaged in the administration of a hospital based hospice.

(4) One (1) registered nurse who is licensed under IC 25-23 and experienced in home health care.

(5) One (1) registered nurse who is licensed under IC 25-23 with certification in hospice and palliative medicine.

(6) One (1):

(A) physical therapist licensed under IC 25-27;

(B) occupational therapist certified under IC 25-23.5; or

(C) speech-language pathologist licensed under IC 25-35.6; experienced in home health care.

(7) One (1) citizen having knowledge of or experience in hospice care.

(8) One (1) citizen having knowledge of or experience in home health agency care.

(9) One (1) registered pharmacist who is licensed under IC 25-26 with experience in hospice and palliative medicine.

(10) One (1) respiratory care practitioner who is licensed under IC 25-34.5 and experienced in home care.

(11) One (1) individual who is a bereavement counselor with experience in hospice care.

(12) The commissioner or the commissioner's designee.

(13) The secretary of family and social services or the secretary's designee.

(c) The governor shall appoint the members of the council designated by subsection (b)(1) through (b)(11).

(d) Except for the members of the council designated by subsection (b)(12) through (b)(13), all appointments are for four (4) years. If a vacancy occurs, the appointee serves for the remainder of the unexpired term. A vacancy shall be filled from the same group that was represented by the outgoing member.

(e) Except for the members of the council designated by subsection (b)(3), a member of the council may not:

(1) have a pecuniary an ownership interest in the operation of; or provide professional services through employment or under contract to

(2) serve as a voting member on the governing body of; a home health agency licensed under this article or a hospice licensed under IC 16-25.

(Reference is to ESB 224 as printed April 1, 2005.)

Miller, Chair

Woodruff

Breaux

C. Brown

Senate Conferees

House Conferees

Roll Call 473: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 233-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 233 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as

follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 35-42-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)).

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)).

(c) (d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

SECTION 2. [EFFECTIVE JULY 1, 2005] IC 35-42-4-6, as amended by this act, applies only to offenses committed after June 30, 2005.

(Reference is to ESB 233 as printed April 1, 2005.)

Drozda, Chair	Ulmer
Lewis	Lawson
Senate Conferees	House Conferees

Roll Call 474: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 295-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 295 respectfully reports that

said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 5.

Renumber all SECTIONS consecutively.

(Reference is to ESB 295 as reprinted April 8, 2005.)

Steele, Chair	Foley
Lanane	Pierce
Senate Conferees	House Conferees

Roll Call 475: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 378-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 378 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-28-6-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 3. (a) The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the biodiesel and ethanol production industries is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this section, IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply throughout this section. A term used in this section that is defined in both IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:

(1) IC 6-3.1-27 whenever this section applies to the certification of a person for a credit under IC 6-3.1-27; and

(2) IC 6-3.1-28 whenever this section applies to the certification of a person for a credit under IC 6-3.1-28.

In addition, as used in this section, "person" refers to a taxpayer or a pass through entity.

(c) As used in this section, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1).

(d) As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

(e) As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

(f) A person that:

- (1) begins construction of a facility or an expansion of a facility for the production of biodiesel, blended biodiesel, or ethanol in Indiana after February 28, 2005; and
- (2) wishes to claim a tax credit with respect to that facility or the expansion of a facility under any combination of IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;

must apply to the corporation for a determination of the person's eligibility for the tax credit.

(g) Subject to this section, the corporation shall issue to each qualifying applicant a certification that:

- (1) certifies the person as eligible for the tax credits for which the person applied;
- (2) identifies the facilities covered by the certification; and
- (3) allocates to the person the lesser of:
 - (A) the maximum allowable credit for which the person is eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11; or
 - (B) a credit equal to the level of production demonstrated as economically viable under the business plan submitted to the corporation by the person.

(h) To qualify for certification under subsection (g), a person must do the following:

- (1) Submit an application for the credit on the forms and in the manner prescribed by the corporation for the credit that is the subject of the application.
- (2) Demonstrate through a business plan and other information presented to the corporation that the level of production proposed by the person is feasible and economically viable. In making a determination under this subdivision, the corporation shall consider:
 - (A) whether the person is sufficiently capitalized to complete the project;
 - (B) the person's credit rating;
 - (C) whether the person has sufficient technical expertise to build and operate a facility; and
 - (D) other relevant financial information as determined by the corporation.

(i) The corporation shall record the time of filing of each application submitted under this section. The corporation shall grant certifications under this section to qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated.

(j) The corporation may terminate a certification or reduce an allocation of a credit granted under this section only if the corporation determines, after a hearing, that the person granted the certification or allocation has failed to:

- (1) substantially comply with the business plan that is the basis for the certification or allocation; or
- (2) submit the information needed by the corporation to determine whether the person has substantially complied with the business plan that is the basis of the certification or allocation.

If an allocation of a credit is terminated or reduced, the unused credit becomes available for allocation to other qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum

allowable credit for that type of credit is fully allocated. The corporation may approve an amendment to a business plan or a transfer of a certificate of eligibility in conformity with the terms and conditions specified by the corporation in rules adopted by the corporation under IC 4-22-2.

(k) The corporation shall give the department of state revenue written notice of each action taken under this section.

SECTION 2. IC 6-3.1-27-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 2.5. As used in this chapter, "corporation" refers to the Indiana economic development corporation.

SECTION 3. IC 6-3.1-27-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 3.2. As used in this chapter, "distribute at retail" means to sell or otherwise distribute for consideration to an end user in Indiana.

SECTION 4. IC 6-3.1-27-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 3.5. As used in this chapter, "facility" refers to a facility that is located in Indiana and is for the production of:

- (1) biodiesel;
- (2) blended biodiesel that is blended with biodiesel produced at a facility located in Indiana; or
- (3) both biodiesel and blended biodiesel, as described in subdivision (2).

SECTION 5. IC 6-3.1-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 8. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of gallons of biodiesel:
 - (A) produced at the Indiana facility during the taxable year; and
 - (B) used to produce blended biodiesel.

(b) The credit provided by this section shall be reduced by any credit or subsidy that the taxpayer is entitled to receive from the federal government for the production of biodiesel by the taxpayer.

(c) (b) The total amount of credits allowed a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed ~~one~~ three million dollars (\$1,000,000) (\$3,000,000) for all taxpayers and all taxable years.

(c) Notwithstanding subsection (b), the total amount of credits allowed a taxpayer (or if the person producing biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 6. IC 6-3.1-27-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 9. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit

under this section and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
 - (A) produced at the Indiana facility; and
 - (B) blended with biodiesel produced at a facility located in Indiana.

~~(b) The credit provided by this section shall be reduced by any credit or subsidy that the taxpayer is entitled to receive from the federal government for the production of blended biodiesel by the taxpayer.~~

~~(c) (b) The total amount of credits allowed a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed one three million dollars (\$1,000,000) (\$3,000,000) for all taxpayers and all taxable years.~~

SECTION 7. IC 6-3.1-27-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 9.5. The total amount of credits allowed under:**

- (1) section 8 of this chapter;
- (2) section 9 of this chapter; and
- (3) IC 6-3.1-28;

may not exceed twenty million dollars (\$20,000,000) for all taxpayers and all taxable years. The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars (\$4,000,000) for each credit.

SECTION 8. IC 6-3.1-27-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 10. (a) A taxpayer that:**

- (1) is a dealer; and
- (2) ~~operates a service station in Indiana at which distributes at retail blended biodiesel is sold and dispensed through a metered pump in a taxable year;~~

is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the product of:

- (1) one cent (\$0.01); multiplied by
- (2) the total number of gallons of blended biodiesel ~~sold and dispensed through all the metered pumps located at a service station described in subsection (a)(2):~~ **distributed at retail by the taxpayer in a taxable year.**

~~(c) The credit allowed under this section must be computed separately for each service station operated by the taxpayer that meets the requirements of subsection (a)(2):~~

~~(d) (c) The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.~~

(d) A credit under this section may not be taken for blended biodiesel distributed at retail after December 31, 2006.

SECTION 9. IC 6-3.1-27-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 12. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the**

following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A credit may not be carried forward for more than six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

SECTION 10. IC 6-3.1-27-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 13. To receive the credit provided by this chapter, a taxpayer must do the following:**

- (1) Claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. ~~The taxpayer shall~~
- (2) **Provide a copy of the certificate of the corporation finding:**
 - (A) **that the taxpayer; or**
 - (B) **if the taxpayer is a shareholder, partner, or member of a pass through entity, that the pass through entity; is eligible for the credit under IC 5-28-6-3.**
- (3) Submit to the department proof of all information that the department determines is necessary for the calculation of the credit provided by this chapter.

The department may require a pass through entity to provide informational reports that the department determines necessary for the department to calculate the percentage of a credit provided by this chapter to which a shareholder, partner, or member of the pass through entity is entitled.

SECTION 11. IC 6-3.1-28-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 1. As used in this chapter, "board" "corporation" refers to the Indiana recycling and energy development board economic development corporation created by IC 4-23-5-5-2: IC 5-28-3-1.**

SECTION 12. IC 6-3.1-28-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 7. Subject to IC 6-3.1-27-9.5 and section 11 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces ethanol at a facility is entitled to a credit against the taxpayer's state tax liability equal to the product of:**

- (1) twelve and one-half cents (\$.125); multiplied by
- (2) the number of gallons of ethanol produced at the Indiana facility.

SECTION 13. IC 6-3.1-28-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 10. To receive the credit provided by this chapter, a taxpayer must do the following:**

- (1) Claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.
- (2) Provide a copy of the ~~board's~~ **corporation's** certificate finding:
 - (A) **that the facility taxpayer; or**
 - (B) **if the taxpayer is a shareholder, partner, or member of a pass through entity, that the pass through entity; is a qualified facility eligible for the credit under IC 4-23-5-5-17: IC 5-28-6-3.**

(3) Submit to the department proof of all information that the department determines is necessary for the calculation of the credit provided by this chapter.

The department may require a pass through entity to provide informational reports that the department determines necessary for the department to calculate the percentage of the credit provided by this chapter to which a shareholder, partner, or member of the pass through entity is entitled.

SECTION 14. IC 6-3.1-28-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 11. (a) The total amount of credits allowed a taxpayer (or, if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) under this chapter may not exceed a total of ~~five~~ **three** million dollars (~~\$5,000,000~~) (**\$3,000,000**) for all taxable years.

~~(b) The total amount of credits allowed under this chapter may not exceed ten million dollars (\$10,000,000) for all taxpayers and all taxable years.~~

(b) Notwithstanding subsection (a), the total amount of credits allowed a taxpayer (or if the person producing ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 15. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Coal Gasification Technology Investment Tax Credit

Sec. 1. The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the coal gasification industry is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this chapter. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "Indiana coal" has the meaning set forth in IC 4-4-30-4.

Sec. 6. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all the following requirements:

- (1) The facility is located in Indiana and is a newly constructed energy generating plant.
- (2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy.
- (3) The facility uses the synthesis gas as a fuel to generate electric energy.

(4) The facility is dedicated primarily to serving Indiana retail electric utility consumers.

Sec. 7. As used in this chapter, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1.)

Sec. 8. As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

Sec. 9. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company;
- (4) a limited liability partnership;
- (5) a corporation organized under IC 8-1-13; or
- (6) a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 10. As used in this chapter, "qualified investment" means a taxpayer's expenditures for:

- (1) all real and tangible personal property incorporated in and used as part of an integrated coal gasification powerplant; and
- (2) transmission equipment and other real and personal property located at the site of an integrated coal gasification powerplant that is employed specifically to serve the integrated coal gasification powerplant.

Sec. 11. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax);
- (3) IC 27-1-18-2 (the insurance premiums tax); and
- (4) IC 6-2.3 (the utility receipts tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 12. As used in this chapter, "taxpayer" means a person, a corporation, a partnership, or other entity that makes a qualified investment.

Sec. 13. As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

Sec. 14. (a) A taxpayer that:

- (1) is awarded a tax credit under this chapter by the corporation; and
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an integrated coal gasification powerplant and for the taxable years provided in section 16 of this chapter.

(b) A tax credit awarded under this chapter must be applied against the taxpayer's state tax liability in the following order:

- (1) Against the taxpayer's liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax).
- (2) Against the taxpayer's liability incurred under IC 6-5.5 (the financial institutions tax).
- (3) Against the taxpayer's liability incurred under IC 27-1-18-2 (the insurance premiums tax).

(4) Against the taxpayer's liability incurred under IC 6-2.3 (the utility receipts tax).

Sec. 15. Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled is equal to the sum of the following:

- (1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.
- (2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).

Sec. 16. (a) A credit awarded under section 15 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant.

(b) Subject to section 20 of this chapter, the amount of an annual installment of the credit awarded under section 15 of this chapter is equal to the amount determined in the last of the following STEPS:

STEP ONE: Determine the lesser of:

- (A) the credit amount determined under section 15 of this chapter, divided by ten (10); or
- (B) the greater of:
 - (i) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or
 - (ii) the taxpayer's liability for the utility receipts tax imposed under IC 6-2.3 for the taxable year.

STEP TWO: Multiply the STEP ONE amount by the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant in the taxable year for which the annual installment of the credit is allowed.

(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied against the state tax liability of the affiliated group.

Sec. 17. A person that proposes to place a new integrated coal gasification powerplant into service may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

Sec. 18. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that the taxpayer's proposed investment satisfies the requirements of this chapter.

Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The maximum tax credit amount that will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(5) A requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.

(6) A requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the integrated coal gasification powerplant into service.

(7) A requirement that the taxpayer shall use Indiana coal at the taxpayer's integrated coal gasification powerplant.

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require, the construction of the taxpayer's integrated coal gasification powerplant.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

Sec. 20. (a) This section applies if a qualified investment is made by a pass through entity or by taxpayers who are co-owners of an integrated coal gasification powerplant.

(b) If the credit allowed by this chapter for a taxable year is greater than the state tax liability of the pass through entity against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year in excess of the pass through entity's state tax liability for the taxable year; multiplied by
- (2) in the case of a pass through entity described in:
 - (i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled; and
 - (ii) section 9(5) or 9(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

(c) If an integrated coal gasification powerplant is co-owned by two (2) or more taxpayers, the amount of the credit that may be allowed to a co-owner in a taxable year is equal to:

- (1) the tax credit determined under sections 15 and 16 of this chapter with respect to the total qualified investment in the integrated coal gasification powerplant; multiplied by
- (2) the co-owner's percentage of ownership in the integrated coal gasification powerplant.

(d) The amount of an annual installment of the credit allowed to a shareholder, partner, or member of a pass through entity or a co-owner shall be determined under section 16 of this

chapter modified as follows:

(1) Section 16(b) STEP ONE (A) of this chapter shall be based on the percentage of the credit allowed to the shareholder, partner, member, or co-owner under this section.

(2) Section 16(b) STEP ONE (B) of this chapter shall be based on the:

(A) state tax liability; or

(B) utilities receipts tax liability;

of the shareholder, partner, member, or co-owner.

Sec. 21. To receive the credit awarded by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department a copy of the commission's determination required under section 19 of this chapter, a copy of the taxpayer's certificate of compliance issued under section 19 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 16. IC 6-3.1-27-5 IS REPEALED [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)].

SECTION 17. [EFFECTIVE JANUARY 1, 2006] IC 6-3.1-29, as added by this act, applies to taxable years beginning after December 31, 2005.

SECTION 18. [EFFECTIVE UPON PASSAGE] The following apply only to taxable years beginning after December 31, 2004:

(1) IC 5-28-6-3, as added by this act.

(2) IC 6-3.1-27-8, IC 6-3.1-27-9, IC 6-3.1-27-10, IC 6-3.1-27-12, IC 6-3.1-27-13, IC 6-3.1-28-7, IC 6-3.1-28-10, and IC 6-3.1-28-11, all as amended by this act.

(3) The repeal of IC 6-3.1-27-5 by this act.

A person who would have been eligible for a credit for the production of biodiesel, blended biodiesel, or ethanol in 2005 under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7, as effective before their amendment by this act, is eligible for the credit in 2005 only if the person complies with this act. However, a person that would have been eligible for a credit in 2005 under IC 6-3.1-27-10, as effective before its amendment by this act, continues to be eligible for the credit through any taxable year beginning before the effective date of this SECTION as if this act had not been enacted, except for IC 6-3.1-27-12, as amended by this act. The amount of the credits taken by a taxpayer under IC 6-3.1-28-10, as effective before the enactment of this act, reduces the maximum allowable credit available under IC 6-3.1-28-10, as amended by this act.

SECTION 19. [EFFECTIVE JANUARY 1, 2006] Each individual provision of this act is fully severable. If a provision requiring an agreement executed under IC 6-3.1-29-19, as added by this act, to include a particular term is declared invalid, the invalidity of the provision does not affect the validity of:

(1) the other provisions of IC 6-3.1-29, as added by this act;

(2) the other terms of the agreement executed under IC 6-3.1-29-19, as added by this act; or

(3) a tax credit awarded under IC 6-3.1-29, as added by this act.

SECTION 20. An emergency is declared for this act.

(Reference is to ESB 378 as reprinted March 23, 2005.)

Weatherwax, Chair

Woodruff

Hume

Stilwell

Senate Conferees

House Conferees

Roll Call 476: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 379-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 379 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.**

SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:**

(1) Manufactures cigarettes.

(2) Does one (1) of the following:

(A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.

(B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).

(3) Pays all applicable taxes under IC 6-7-1.

SECTION 3. IC 24-3-5-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.**

SECTION 4. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.** As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

(1) electronically using a computer network (as defined in IC 35-43-2-3);

(2) by mail; or

(3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual **or** entity at a designated address.

SECTION 5. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor" includes the following:**

(1) A distributor as defined in IC 6-7-1-6.

(2) A distributor as defined in IC 6-7-2-2.

SECTION 6. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. **However, the term does not include a cigar or pipe tobacco.**

SECTION 7. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **Subject to section 4.5 of this chapter**, a merchant may not mail or ship ~~tobacco products~~ **cigarettes** as part of a delivery sale unless, before mailing or shipping the ~~tobacco products~~, **cigarettes**, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing ~~tobacco products~~ **cigarettes** by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the ~~tobacco product~~ **cigarette** order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of ~~tobacco products~~ **cigarettes** by delivery sale is a taxable event for purposes of IC 6-7-1; ~~and IC 6-7-2;~~

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 8. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. **(a) This section applies to a merchant that is not a cigarette manufacturer.**

(b) Except as provided in subsection (d), a merchant may not mail or ship cigarettes as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.

(c) If the commission determines that a merchant has violated subsection (b):

(1) a distributor may not accept a shipment of cigarettes from the merchant for a period, not to exceed one (1) year, determined by the commission; and

(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (b), as determined by the commission.

(d) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.

SECTION 9. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A merchant who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery

sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products~~, **cigarettes**; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products~~, **cigarettes**; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 10. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A merchant shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

- (1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.
- (2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.
- (3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 11. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A merchant who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; ~~and IC 6-7-2~~; or
- (2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these ~~tobacco products~~ **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~ **cigarettes**."

(b) For a violation of this section the ~~alcohol and tobacco~~ commission may impose, in addition to any other remedies, civil penalties as follows:

- (1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).
- (2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).
- (3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).
- (4) If the person has four (4) unrelated judgments for

violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 12. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

- (1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or
 - (2) merchant who sells ~~tobacco products~~ **cigarettes** by delivery sale to a person less than eighteen (18) years of age.
- The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 13. IC 24-3-5.4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. A person may not:

- (1) affix a stamp to a package or other container of cigarettes; or
- (2) sell, ~~or~~ offer or possess for sale, **or import for personal consumption** in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

SECTION 14. IC 24-3-5.4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, **or more frequently if ordered by the department, the commission, or the attorney general**, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

- (1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.
- (2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

SECTION 15. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Contraband Cigarettes

Sec. 1. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 2. As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

Sec. 3. As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

Sec. 4. As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

Sec. 5. As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

Sec. 6. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

Sec. 7. As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

Sec. 8. As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

Sec. 9. (a) The commission may issue or renew a license to the following applicants:

- (1) An importer.
- (2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall not issue or renew a license under this section if:

- (1) the applicant owes at least five hundred dollars (\$500) in taxes imposed under IC 6-7-1-12;
- (2) the commission revoked the applicant's license within two (2) years before the application;
- (3) the applicant commits an offense under IC 6-7-1-21;
- (4) the applicant does not comply with IC 24-3-3-12; or
- (5) the applicant violates IC 24-3-4.

(f) The commission may revoke or suspend a license issued under this section if the applicant:

- (1) is not eligible to receive or renew a license under subsection (e); or
- (2) violates this chapter.

Sec. 10. (a) A distributor may apply a stamp only to cigarettes that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.

Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.

(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.

(e) Except as provided in subsection (f), a retailer may obtain cigarettes only from a distributor.

(f) A retailer that is a holder of a certificate issued under IC 7.1-3-18.5 may purchase up to one thousand dollars (\$1,000) of cigarettes per week from another retailer that holds a certificate issued under IC 7.1-3-18.5.

Sec. 12. (a) This section does not apply to a distributor who:

- (1) is a licensed manufacturer; and
- (2) complies with section 13 of this chapter.

(b) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

- (1) The number and brand of cigarettes:

- (A) distributed;
- (B) shipped into Indiana; or
- (C) shipped within Indiana;

during the immediately preceding month.

- (2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:

- (1) the name and address of the parties to the transaction; and
- (2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date of the transaction.

(e) The commission may:

- (1) obtain access to; and
- (2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

- (1) five (5) times the value of the cigarettes involved in the violation; or**
- (2) one thousand dollars (\$1,000).**

(b) A civil penalty under this section is in addition to any other penalty imposed.

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

- (1) The attorney general or the attorney general's designee.**
- (2) A person that holds a valid permit under 26 U.S.C. 5712.**

(b) A person that brings an action under subsection (a) shall provide notice to the attorney general of the commencement of the action.

SECTION 16. IC 24-4-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, or medical devices, or cigarettes or other tobacco products.

SECTION 17. IC 34-24-1-1, AS AMENDED BY SEA 47-2005, SEC. 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

- (1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:**
 - (A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:**
 - (i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).**
 - (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).**
 - (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).**
 - (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).**
 - (v) Dealing in a counterfeit substance (IC 35-48-4-5).**
 - (vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).**
 - (vii) Dealing in paraphernalia (IC 35-48-4-8.5).**
 - (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).**
 - (B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.**
 - (C) Any hazardous waste in violation of IC 13-30-6-6.**
 - (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).**
- (2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):**
 - (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;**
 - (B) used to facilitate any violation of a criminal statute; or**
 - (C) traceable as proceeds of the violation of a criminal statute.**
- (3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.**
- (4) A vehicle that is used by a person to:**
 - (A) commit, attempt to commit, or conspire to commit;**
 - (B) facilitate the commission of; or**
 - (C) escape from the commission of;**
murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.
- (5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:**
 - (A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).**
 - (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).**
 - (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).**
 - (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).**
- (6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).**
- (7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.**
- (8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).**

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

~~(12) Cigarettes that are sold in violation of IC 24-3-5-2; cigarettes that a person attempts to sell in violation of IC 24-3-5-2; and other personal property owned and used by a person to facilitate a violation of IC 24-3-5-2.~~

~~(13)~~ (12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

~~(14)~~ (13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 18. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 19. [EFFECTIVE JULY 1, 2005] Notwithstanding IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in IC 24-3-6-2, as added by this act) is not required to

report the information required in IC 24-3-6-12(b)(2), as added by this act, until the later of the following:

(1) When the attorney general becomes capable of receiving the information reported in an electronic format.

(2) July 1, 2008.

(Reference is to ESB 379 as reprinted April 6, 2005.)

Weatherwax, Chair

Cherry

Howard

Pelath

Senate Conferees

House Conferees

Roll Call 477: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 433-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 433 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 1-2-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 12. State Poet Laureate

Sec. 1. As used in this chapter, "commission" refers to the Indiana arts commission established by IC 4-23-2-1.

Sec. 2. As used in this chapter, "selection committee" refers to the committee described in section 4 of this chapter.

Sec. 3. The poet laureate of Indiana shall be selected under this chapter.

Sec. 4. (a) The selection committee consists of the following eight (8) members:

(1) Seven (7) members selected by the commission who represent state supported and private institutions of higher education.

(2) The executive director of the commission.

(b) The president of each of the institutions selected under subsection (a)(1) shall name a faculty member to serve on the selection committee. The faculty member must:

(1) be a member of the fine arts or English department of the institution; and

(2) teach writing.

(c) The executive director of the commission:

(1) is the chair of; and

(2) shall establish the meeting times and dates for;

the selection committee.

Sec. 5. The selection committee shall do the following:

(1) Meet on a biennial basis to select the poet laureate.

(2) Determine a method of selecting the poet laureate.

(3) Select a poet laureate not later than December 1 of each odd-numbered year.

(4) Permit a person to be selected as poet laureate even if the person has previously served as poet laureate.

Sec. 6. A person selected as poet laureate serves a two (2) year term that begins January 1 following the poet laureate's selection.

Sec. 7. (a) The poet laureate shall do the following:

- (1) Make a formal appearance at schools, libraries, and other educational facilities.
- (2) Offer advice to the commission concerning ways to further the art of poetry in Indiana.
- (3) Represent Indiana and the art of poetry to the education community and the public.

(b) The department of education shall assist the poet laureate in scheduling the poet laureate's appearances in educational facilities and at other appropriate events.

Sec. 8. (a) The commission may pay an annual honorarium of two thousand five hundred dollars (\$2,500) to the poet laureate.

(b) The commission may pay a per diem to the poet laureate for each day that the poet laureate makes an appearance under this chapter.

(c) The commission may pay travel expenses to a member of the selection committee unless the member's institution reimburses the member for the expenses.

Sec. 9. All expenses and other payments permitted under this chapter shall be paid from appropriations to or other funds of the commission.

SECTION 2. [EFFECTIVE JULY 1, 2005] **(a)** The person honored as poet laureate of Indiana by the house of representatives in House Resolution 73-2002 is entitled to serve as the initial poet laureate of Indiana under IC 1-2-12, as added by this act, until December 31, 2005.

(b) This SECTION expires January 1, 2006.

(Reference is to ESB 433 as printed March 22, 2005.)

Lubbers, Chair	Behning
Rogers	Klinker
Senate Conferees	House Conferees

Roll Call 478: yeas 45, nays 3. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 481-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 481 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, delete lines 7 through 42.

Page 4, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

(Reference is to ESB 481 as printed March 23, 2005.)

Lawson, Chair	Budak
Simpson	Crawford
Senate Conferees	House Conferees

Roll Call 479: yeas 49, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 509-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 509 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-22-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a)** Except as provided in subsection (b), this article does not apply to the following types of activities:

- (1) A contract between governmental bodies except for a contract authorized under this article.
- (2) A public works project.
- (3) A collective bargaining agreement between a governmental body and its employees.
- (4) The employment relationship between a governmental body and an employee of the governmental body.
- (5) An investment of public funds.
- (6) A contract between a governmental body and a body corporate and politic.
- (7) A contract for social services.
- (8) A contract with a body corporate and politic.

(b) IC 5-22-3-7 applies to any:

- (1) contract;
- (2) project;
- (3) agreement;
- (4) employment relationship; or
- (5) investment;

described in subsection (a).

SECTION 2. IC 5-22-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.** Except as otherwise provided, the definitions in this chapter apply throughout this article.

SECTION 3. IC 5-22-2-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.3. "Affiliate"** means a business entity that effectively controls or is controlled by a contractor or associated with a contractor under common ownership or control, whether by shareholdings or other means, including a subsidiary, parent, or sibling of a contractor.

SECTION 4. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a)** This section applies to every use of funds by a governmental body. However, this section does not apply to a contract in which one (1) party is a political subdivision, including a body corporate and politic created by or authorized by a political subdivision.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor includes the following certifications as terms of the contract with the

governmental body:

(1) The contractor and any principals of the contractor certify that:

(A) the contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

- (i) IC 24-4.7;
- (ii) IC 24-5-12; or
- (iii) IC 24-5-14;

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the contractor will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(2) The contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:

(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(c) If a certification in subsection (b) concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the contractor, an affiliate or a principal of the contractor, or an agent acting on behalf of the contractor or an affiliate or a principal of the contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the attorney general may bring a civil action in the circuit or superior court of Marion County to:

- (1) void a contract under this section, subject to subsection (d); and
- (2) obtain other proper relief.

However, a contractor is not liable under this section if the contractor or an affiliate of the contractor acquires another business entity that violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the preceding three hundred sixty-five (365) days before the date of the acquisition if the acquired business entity ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, as of the date of the acquisition.

(d) If:

(1) the attorney general notifies the contractor, department of administration, and budget agency in writing of the intention of the attorney general to void a contract; and

(2) the attorney general does not receive a written objection from the department of administration or budget agency, sent to both the attorney general and the contractor, within thirty (30) days of the notice;

a contract between a contractor and a governmental body is voidable at the election of the attorney general in a civil action brought under subsection (c). If an objection of the department of administration or the budget agency is submitted under subdivision (2), the contract that is the subject of the objection is not voidable at the election of the attorney general unless the

objection is rescinded or withdrawn by the department of administration or the budget agency.

(e) If the attorney general establishes in a civil action that a contractor is knowingly, intentionally, or recklessly liable under subsection (c), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

SECTION 5. IC 24-4.7-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. **In addition, a contractor who contracts or seeks to contract with the state:**

(1) may be prohibited from contracting with the state; or

(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, or any agent acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law.

SECTION 6. IC 24-5-0.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes a transfer of structured settlement payment rights under IC 34-50-2.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means:

(A) a seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not ~~he~~ **the person** deals directly with the consumer; or

(B) a person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property services, or intangibles furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

~~(6)~~ (7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after ~~his~~ **the consumer's** acceptance of the offer to cure.

~~(7)~~ (8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

~~(8)~~ (9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

~~(9)~~ (10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

~~(10)~~ (11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 7. IC 24-5-0.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act **or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:**

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, **including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)),** except for purchases of time shares and camping club memberships. **This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14.** Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. **Except as provided in subsection (j),** the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to

consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers; and
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five hundred dollars (\$500) per violation.

(h) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(i) An offer to cure is:

- (1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and**
- (2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (j).**

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in

the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(j) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (i) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 8. IC 24-5-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails to comply with any provision of:

- (1) this chapter; or**
- (2) IC 24-4.7;**

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. **An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for a violation of this chapter or IC 24-4.7 may be brought in the circuit or superior court of Marion County.

SECTION 9. IC 32-27-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by ~~the initial home buyer~~. **one (1) of the following:**

- (1) The builder.**
- (2) An individual or individuals renting the home from the builder.**
- (3) An individual or individuals living in the home at the request of the builder.**
- (4) The initial home buyer.**

SECTION 10. IC 32-27-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

- (1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.
- (2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:
 - (A) plumbing;
 - (B) electrical;
 - (C) heating;
 - (D) cooling; or
 - (E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

(c) An individual identified in section 7(1), 7(2), or 7(3) of this chapter who is selling a new home shall notify the purchaser of

the home in writing on or before the date of closing or transfer of the new home of:

- (1) the warranty date (as defined in section 7 of this chapter); and
- (2) the amount of time remaining under the warranty.

SECTION 11. [EFFECTIVE UPON PASSAGE] IC 5-22-1-3, IC 5-22-2-1, IC 24-4.7-5-1, and IC 24-5-12-23, all as amended by this act, and IC 5-22-3-7, as added by this act, apply only to a contract entered into or renewed after the effective date of this act.

SECTION 12. An emergency is declared for this act.

(Reference is to ESB 509 as printed March 29, 2005.)

Clark, Chair	Yount
Lanane	Kuzman
Senate Conferees	House Conferees

Roll Call 480: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 564-1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 564 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Re-number all SECTIONS consecutively.

(Reference is to ESB 564 as printed March 23, 2005.)

Clark, Chair	Burton
Broden	Bottorff
Senate Conferees	House Conferees

Roll Call 481: yeas 49, nays 0. Report adopted.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Madam President: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedure, to which was referred Engrossed House Bill 1776 because it conflicts with Senate Enrolled Act 32-2005 without properly recognizing the existence of SEA 32-2005, has had EHB 1776 under consideration and begs leave to report back to the Senate with the recommendation that EHB 1776 be corrected as follows:

Page 3, line 35, after "IC 35-47-2-3" insert ", AS AMENDED BY SEA 32-2005, SECTION 2,".

Page 4, line 35, delete "his" and insert "the officer's".

Page 5, line 2, after "applicant" insert ":

(1)".

Page 5, line 3, after "handgun" delete "and" and insert ";

(2)".

Page 5, line 4, delete "and" and insert ";

(3) is".

Page 5, line 4, delete "so".

Page 5, line 4, delete "licensed," and insert "licensed; and

(4) is:

(A) a citizen of the United States; or

(B) not a citizen of the United States but is allowed to carry a firearm in the United States under federal law;".

Page 5, line 4, begin a new line blocked left beginning with "the superintendent".

(Reference is to EHB 1776 as printed March 25, 2005.)

GARTON, Chair
R. YOUNG, R.M.M.
MILLER

Report adopted.

COMMITTEE REPORT

Madam President: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedure, to which was referred Engrossed House Bill 1403 because it conflicts with House Enrolled Act 1039-2005 without properly recognizing the existence of HEA 1039-2005, has had EHB 1403 under consideration and begs leave to report back to the Senate with the recommendation that EHB 1403 be corrected as follows:

Page 5, line 8, after "IC 35-43-5-1" insert ", AS AMENDED BY HEA 1039-2005, SECTION 1,".

Page 6, between lines 5 and 6, begin a new paragraph and insert: "(g) "Drug or alcohol screening test" means a test that:

(1) is used to determine the presence or use of alcohol, a controlled substance, or a drug in a person's bodily substance; and

(2) is administered in the course of monitoring a person who is:

(A) incarcerated in a prison or jail;

(B) placed in a community corrections program;

(C) on probation or parole;

(D) participating in a court ordered alcohol or drug treatment program; or

(E) on court ordered pretrial release.".

Page 6, line 6, delete "(g)" and insert "(h)".

Page 6, line 9, delete "(h)" and insert "(i)".

Page 6, line 28, delete "(i)" and insert "(j)".

Page 6, line 34, delete "(j)" and insert "(k)".

Page 7, line 1, delete "(k)" and insert "(l)".

Page 7, line 4, delete "(l)" and insert "(m)".

Page 7, line 6, delete "(m)" and insert "(n)".

Page 7, line 9, delete "(n)" and insert "(o)".

Page 7, line 11, delete "poor".

Page 7, line 12, delete "relief, township assistance," and insert "township assistance,".

Page 7, line 14, delete "(o)" and insert "(p)".

Page 7, line 28, delete "(p)" and insert "(q)".

Page 7, line 31, delete "(q)" and insert "(r)".

Page 7, line 35, delete "(r)" and insert "(s)".

(Reference is to EHB 1403 as printed April 1, 2005.)

GARTON, Chair
R. YOUNG, R.M.M.
PAUL

Report adopted.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 80

House Concurrent Resolution 80, sponsored by Senator Ford:

A CONCURRENT RESOLUTION memorializing Master Sergeant Michael Hiester.

Whereas, Master Sergeant Michael Hiester died March 26, 2005, when the military vehicle in which he was riding struck and detonated a land mine in Afghanistan;

Whereas, Master Sergeant Hiester will posthumously receive the Bronze Star, the Purple Heart, and the Combat Infantryman's Badge;

Whereas, Master Sergeant Hiester joined the Indiana National Guard in 1989 and had worked full time for the Guard since 1990;

Whereas, Master Sergeant Hiester was an operations officer with the 238th Cavalry Regiment and served with that group in Bosnia-Herzegovina as part of the Indiana National Guard's peacekeeping assignment;

Whereas, Master Sergeant Hiester joined the Bluffton Fire Department in 1993;

Whereas, Leader of the department's dive team, Master Sergeant Hiester was an instructor who also made himself an expert in ropes and rappelling;

Whereas, Master Sergeant Hiester was a member of the American Legion and the Veterans of Foreign Wars in addition to the National Guard Association of Indiana and the International Association of Dive Rescue Specialists;

Whereas, In his spare time, Master Sergeant Hiester enjoyed cycling and diving;

Whereas, Hoosier men and women fighting the war on terrorism have responded to their country's call without hesitation, and some of these dedicated men and women have been called upon to make the ultimate sacrifice;

Whereas, The families of these brave men and women are supported at home through the prayers and love of their families and friends; and

Whereas, Master Sergeant Hiester lived his entire life in the town of Bluffton and dedicated a large part of his time to helping the community: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the Indiana General Assembly expresses its deep felt sorrow to the members of the family of Master Sergeant

Michael Hiester in their time of great sorrow and expresses its appreciation of the sacrifice he made in order to keep our country and the world free.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Master Sergeant Michael Hiester's wife Dawn, his children Emily and Adam, his parents Tom and Kay Hiester, and his sisters Michele and Megan.

The resolution was read in full and adopted by standing vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Senate Resolution 21.

WYSS

Motion prevailed.

SENATE MOTION

Madam President: I move that Senator R. Young be added as coauthor of Senate Resolution 26.

WATERMAN

Motion prevailed.

REPORT OF THE PRESIDENT PRO TEMPORE

Madam President: Pursuant to Senate Rule 65(b), I hereby report that Senate Resolution 38, currently assigned to the Committee on Homeland Security, Utilities and Public Policy, has been withdrawn from consideration by the Committee and is now eligible for immediate action.

GARTON

RESOLUTIONS ON SECOND READING

Senate Resolution 38

Senator Wyss called up Senate Resolution 38 for second reading. The resolution was read a second time by title and adopted by voice vote.

SENATE MOTION

Madam President: I move we adjourn until 1:30 p.m., Wednesday, April 27, 2005.

GARTON

Motion prevailed.

The Senate adjourned at 2:49 p.m.

MARY C. MENDEL
Secretary of the Senate

REBECCA S. SKILLMAN
President of the Senate